

Technical Instruction Office of Contracting	Title: Subcontract Consent Reviews		Approved: Signature on File Peer Reviewed: Done
	No.: TI-OOC-002	Rev.: 1	Date: August 21, 2008

1.0 **Purpose:**

The purpose of this technical instruction is to specify the process for subcontract consent reviews in accordance with the Federal Acquisition Regulations (FAR) and the DOE Acquisition Regulations (DEAR).

2.0 **Applicability:**

This technical instruction is applicable to all EMCBC Contracting Officers (COs) and Contracting Officer Representatives/Technical Monitors (CORs/TMs) who receive and perform reviews of requests for subcontract consent.

3.0 **References:**

- 3.1 IP-540-15, Review and Approval of Proposed Sales, Procurement, Financial Assistance, and Subcontract Actions
- 3.2 FAR 44.2, Consent to Subcontracts
- 3.3 DEAR 970.4401-2, Review and Approval
- 3.4 DEAR 909.4, Debarment, Suspension, Ineligibility
- 3.5 DOE Acquisition Guide 70.7, Chapter 10, Subcontract Management
- 3.6 FAR 52.244-2, Subcontracts
- 3.7 FAR 52.244-2, Subcontractors and Outside Associates and Consultants (Architect-Engineer Services)
- 3.8 DEAR 970.5204-22, Contractor Purchasing System
- 3.9 IP-243-03, Identifying, Filing and Maintaining Records

4.0 **Technical Instruction:**

- 4.1 As defined in FAR 44 “Subcontracting Policies and Procedures” a subcontract means any contract as defined in FAR Subpart 2.1 entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract. It includes but is not limited to purchase orders, and change and modifications to purchase orders.
- 4.2 Subcontractor means any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor.
- 4.3 The FAR prescribes various “Subcontracts” clauses which require advance notification by the contractor and prior written consent of the CO. (See FAR 52.244-2 and FAR 52.244-4.) The specific notification consent requirements vary depending upon the specific clause utilized.

4.4 **Receipt of Requests to Subcontract:**

- 4.4.1 Upon receipt of requests to subcontract from the contractor, the CO shall forward requests to the corresponding Contracting Officer Representative/Technical Monitor (COR/TM), if applicable, for review.
- 4.4.2 The COR/TM shall review requests to determine technical need and ensure the following:
 - All elements (including supplies, equipment, and all services) are technically justified;
 - Work is within scope of a prime contractor’s statement of work or performance work statement and that technical requirements have been adequately translated into the proposed subcontract requirements;
 - The proposed subcontractor is technically capable of performing the work; and
 - The subcontract cost estimate is reasonable.
- 4.4.3 The COR/TM shall complete COR/TM Technical Questionnaire (Attachment A) and send it to the CO.

4.5 **Contracting Officer’s Review:**

- 4.5.1 Upon receipt of the COR/TM Technical Questionnaire if a COR/TM review was requested, the CO shall complete the Subcontract Consent Review Checklist (Attachment B). The checklist provides a convenient means to verify that the key elements of the contractor's procurement have been addressed. It is an expedient tool for documenting the results of the review and should assist in enhancing the quality of the review and in reducing the time required to complete the consent/approval process. The checklist is provided for the CO’s use (in whole or in part) in subcontract review

consistent with the complexity and amount of subcontracting effort. The completed checklist shall be retained in the contract file.

- 4.5.2 In reviewing and evaluating the subcontract consent request, the CO shall seek advice and assistance, as necessary, to fulfill his/her responsibilities from subject matter experts in cognizant program, legal, human resources, and small business disciplines.
- 4.5.3 In the review of an individual subcontract consent package action, the reviewing CO shall consider the following:
 - 4.5.3.1 FAR 44.202, "Contracting Officer's Evaluation": This FAR section provides a description of the CO's responsibilities and a list of 13 considerations which should be addressed in all reviews for consent. Particular attention to these considerations is necessary when:
 - the prime contractor's purchasing system or performance is inadequate;
 - close working relationships or ownership affiliations between the prime and subcontractor may preclude free competition or result in higher prices;
 - subcontracts are proposed for award on a noncompetitive basis or at a price that appears unreasonable;
 - subcontracts are proposed on a cost- reimbursement, time-and-material, or labor-hour basis.
 - 4.5.3.2 For those subcontracts requiring CO consent, the CO shall review the proposed subcontract to assure it meets all the requirements of the Contractor's approved purchasing system.
- 4.5.4 The CO shall verify that the contractor has checked to determine if the proposed subcontractor is listed on the GSA Excluded Parties List System (EPLS). DOE may not consent to subcontract with contractors debarred, suspended or proposed for debarment unless the Deputy Assistant Secretary for Procurement and Assistance Management makes a written determination justifying that there is a compelling reason for such action in accordance with FAR 9.405(a).
- 4.5.5 Prior to providing consent to subcontract, the Contracting Officer shall submit the complete subcontract consent package for OOC review in compliance with the monetary thresholds in IP-540-15, "Review and Approval of Proposed Sales, Procurement, Financial Assistance, and Subcontract Actions." The package shall contain the contractor's consent request and the completed checklists contained in this procedure.

- 4.5.6 When consent is given to subcontract, the CO shall prepare and issue a letter to the contractor providing consent to subcontract. (See the example in Attachment C.)
- 4.5.7 If, as a result of the review, it is determined that the proposed subcontract action is unacceptable to the Government, the CO shall not grant consent and notify the prime contractor of the reasons for withholding consent. Other arrangements must then be made for the proposed work. This may involve altering some of the terms of the subcontract, or it may require the selection of another subcontract source. This will depend on the particular reasons for denying consent.

5.0 Records:

- 5.1 Records generated as a result of implementing this document are identified as follows, and are maintained by the Office of Contracting in accordance with the Office of Contracting Organizational File Plan:
 - 5.1.1 Contracting Officer's Representative/Technical Monitor (COR/TM) Technical Questionnaire, TI-OOC-002-F1
 - 5.1.2 EMCBC Office of Contracting Subcontract Consent Review Checklist, TI-OOC-002-F2

6.0 Flowchart:

- 6.1 Attachment D

7.0 Attachments:

- 7.1 Attachment **A**- Contracting Officer's Representative/Technical Monitor (COR/TM) Technical Questionnaire, TI-OOC-002-F1
- 7.2 Attachment **B**- EMCBC Office of Contracting Subcontract Consent Review Checklist, TI-OOC-002-F2
- 7.3 Attachment **C**- Contracting Officer Consent Letter, "Sample"

**CONTRACTING OFFICER'S REPRESENTATIVE/
TECHNICAL MONITOR (COR/TM)
TECHNICAL QUESTIONNAIRE**

Contractor: _____
Contract No.: _____
Date: _____

YES NO NA General

- | | | | |
|--------------------------|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 1. Is the proposed subcontract work within scope of the prime contract? |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 2. Is the proposed subcontractor technically capable of performing the work? |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 3. Is the subcontract cost estimate reasonable? |

Direct Labor

- | | | | |
|--------------------------|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 4. Is the proposed <i>mix/type</i> of labor effort appropriate for the work to be performed? |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 5. Are the proposed <i>number</i> of hours/ <i>percents</i> of effort reasonable for the work to be performed? |

Direct Materials/Supplies

- | | | | |
|--------------------------|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 6. Are the following appropriate as compared to the contract work scope: |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | a. proposed type of materials/supplies? |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | b. proposed quality of materials/supplies? |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | c. proposed number of units of each type of material/supply? |

Equipment

- | | | | |
|--------------------------|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 7. Is the proposed equipment necessary for the work to be performed? |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 8. Is the proposed equipment "project specific" rather than a type that would be required for the work normally performed by the contractor, i.e., inherent to the business? |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 9. Is use of the proposed type of equipment limited only to research or other technical activities? |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 10. To your knowledge, are the same or similar types of equipment (ones that may be used for comparable purposes) currently unavailable at the project? |

YES NO NA Travel

- | | | | |
|--------------------------|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 11. Are the following appropriate or reasonable taking into consideration the purpose of the travel and the contract work scope: |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | a. proposed number of trips? |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | b. proposed duration of trips? |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | c. proposed destination of trips? |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | d. proposed number and types of people traveling? |

Computer

- | | | | |
|--------------------------|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 12. Are computer services required for the work to be performed? |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 13. Are the proposed computer and related services reasonable from a quantitative standpoint, e.g., CPU hours, I/O lines, number of runs? |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 14. Is the proposed <i>type</i> of computer equipment appropriate for the work to be performed? |

Consultants

- | | | | |
|--------------------------|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 15. Are the proposed consultants' services essential to the project? |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 16. Are the proposed consulting hours/effort reasonable compared to the work to be performed? |
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 17. Is the proposed travel for consultants reasonable (i.e., number of trips, destination of trips, duration of trips, etc.)? |

Alterations and Renovations

- | | | | |
|--------------------------|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 18. Are the proposed alterations and renovations essential to the proposed project? |
|--------------------------|--------------------------|--------------------------|---|

Continued on next page.

Subcontracts

19. An additional COR/TM Technical Questionnaire should be completed for each subcontract.

Space for Additional Comments. Indicate question number to which comments apply if applicable. Use a blank sheet of paper if additional space is required.

Signed:

<hr/> COR/TM	<hr/> <i>Printed Name</i>
<hr/> <i>Date</i>	<hr/> <i>Phone No.</i>

1. If sufficient technical detail (quantities, qualities, mixes, etc.) is not included in the business proposal to allow for analysis, the contracting officer/specialist should obtain prior to meeting with the COR/TM to discuss the technical aspects of the proposal.
2. In answering the questions on the questionnaire, emphasis must be placed on the reasonableness of the technical aspects of the element being reviewed. Be specific when noting changes that should be made (e.g., designate positions/FTEs/individuals to be deleted/reduced or added/increased; quantities to be adjusted, etc.). If a dollar amount is recommended in lieu of a specific recommendation relative to the technical aspects (e.g., "materials/supplies should be reduced to \$30,000"), a justification for the recommended dollar amount must be included with comments.
3. All questions on the technical questionnaire must be answered. If a question does not apply to the subcontract under review, check the NA block for Not Applicable.

EMCBC OFFICE OF CONTRACTING
SUBCONTRACT CONSENT REVIEW CHECKLIST

SECTION A: Identification

Prime Contract Number: _____

Prime Contractor Name: _____

Prime Contract Type: ☐ Cost Reimbursement ☐ Fixed Price ☐ Other _____

Proposed Subcontractor Name: _____

Proposed Subcontract Type: ☐ Cost Reimbursement ☐ Fixed Price ☐ Other _____

Proposed Subcontract cost ceiling or price: \$ _____

Proposed Subcontract percentage of total prime contract value: _____

Date of request for consent: _____

Date received: _____

SECTION B: Checklist

General

1. The subcontract consent package was submitted timely.
☐ Yes ☐ No, explain.
2. An adequate description of the supplies, equipment, or services was provided and the selection of these particular items is technically justified.
☐ Yes ☐ No, explain.
3. The contractor has adequately and reasonably translated prime contract technical requirements into subcontract requirements.
☐ N/A ☐ Yes ☐ No, explain.
4. Adequate consideration has been obtained for the use of Government-furnished facilities and real property.
☐ N/A ☐ Yes ☐ No, explain.
5. Is the subcontract for special equipment or facilities that are available from Government sources?
☐ N/A ☐ Yes ☐ No, explain.
6. The contractor has adequately assessed and disposed of the subcontractor's alternate proposals, if offered.
☐ N/A ☐ Yes ☐ No, explain.
7. A copy of the proposed subcontract was provided.
☐ N/A ☐ Yes ☐ No, explain.
8. The contractor has adequately implemented the requirements of applicable labor acts (see FAR Part 22).
☐ N/A ☐ Yes ☐ No, explain.
9. The proposed subcontract delivery/completion requirements are reasonable.
☐ N/A ☐ Yes ☐ No, explain.

10. The procurement was processed effectively, efficiently, expeditiously, and economically.
☐N/A ☐Yes ☐No, explain.
11. Does the prime contractor comply with applicable cost accounting standards for awarding the subcontract?
☐N/A ☐Yes ☐No, explain.
12. The procurement was reviewed by and/or had the involvement of contractor's Quality Assurance staff.
☐N/A ☐Yes ☐No, explain.

Source Selection

1. The proposed subcontractor was identified.
☐Yes ☐No, explain.
2. Make-or-buy considerations have been adequately addressed.
☐N/A ☐Yes ☐No, explain.
3. Procurement is not from a contractor-controlled source/ or if from a contractor-controlled source, adequate justification was provided.
☐N/A ☐Yes ☐No, explain.
4. The contractor considered soliciting labor surplus area and small business sources, including small businesses owned and controlled by disadvantaged individuals.
☐N/A ☐Yes ☐No, explain.
5. The contractor has complied with the prime contract requirements regarding small business subcontracting, including, if applicable, its plan for subcontracting with small, veteran-owned, service-disabled veteran-owned, HUBZone, small disadvantaged and women-owned small business concerns (see FAR Part 19); and purchase from nonprofit agencies designated by the Committee for Purchase From People Who Are Blind or Severely Disabled (Javits-Wagner-O'Day Act (JWOD) (see FAR Part 8)
☐N/A ☐Yes ☐No, explain.
6. The contractor agreed to provide progress payments on fixed-price subcontracts with small business concerns in conformity with FAR 32.5 and not to consider such payments as an adverse factor in selection.
☐N/A ☐Yes ☐No, explain.
7. Was adequate price competition obtained or its absence properly justified?
☐Yes ☐No, explain.
8. The contractor has a sound basis for determining the responsibility of a particular subcontractor.
☐Yes ☐No, explain.
9. Is the proposed subcontract type appropriate for the risks involved and consistent with current policy?
☐Yes ☐No, explain.
10. The proposed subcontractor's name appears on the Excluded Parties List System (See FAR 9.404).
☐N/A ☐Yes, explain. ☐No
11. A foreign ownership, control or influence (FOCI) determination has been made (See DEAR 904.70).
☐N/A ☐Yes ☐No, explain.

12. An organizational conflicts of interest (OCI) analysis has been performed (See DEAR 909.5).
☐ N/A ☐ Yes ☐ No, explain.
13. A pre-award equal opportunity compliance review has been performed within six months of the estimated award date and a determination has been made that the subcontractor is awardable (FAR-22).
☐ N/A ☐ Yes ☐ No, explain.

Flow Down Representations and Certifications

The required subcontractor representations and certifications were obtained or are not applicable.
☐ N/A ☐ Yes ☐ No, explain.

Clauses

1. The clauses which are required to be incorporated in subcontracts were adequately flowed down.
☐ N/A ☐ Yes ☐ No, explain.
2. The following clauses were adequately handled.
☐ N/A ☐ Yes ☐ No, explain.
- a. Changes, ☐ N/A
 b. Termination, ☐ N/A
 c. Government Property, ☐ N/A
 d. Cost Accounting Standards, ☐ N/A
3. All other clauses appeared to be appropriate.
☐ N/A ☐ Yes ☐ No, explain.

Type of Subcontract

1. The proposed subcontract is firm-fixed price or an adequate justification for using another type of contract was provided; it is not a cost-plus-a-percentage-of-cost subcontract.
☐ N/A ☐ Yes ☐ No, explain.
2. If incentives are proposed, an adequate explanation of the incentive fee/profit plan, management decisions used to quantify each incentive element, and a brief summary of trade-off possibilities was provided.
☐ N/A ☐ Yes ☐ No, explain.

Price/Cost Justification

1. The proposed price/cost was adequately analyzed and justified as being fair and reasonable on the following basis(es):
☐ Yes ☐ No, explain.
- ☐ Price analysis; comparison with _____
- ☐ Cost analysis
- ☐ See remarks.
2. The proposed profit/fee was adequately analyzed and justified as being fair and reasonable.
☐ N/A ☐ Yes ☐ No, explain.

Memorandum of Negotiations

1. An adequate memorandum of negotiations which sets forth the principal elements of the subcontract negotiation was submitted.
☐ Yes ☐ No, explain.
2. Accurate, complete, and current cost or pricing data were obtained or an adequate reason for not obtaining these data was submitted.
☐ N/A ☐ Yes ☐ No, explain.
3. A properly executed Certificate of Current Cost or Pricing Data was obtained.
☐ N/A ☐ Yes ☐ No, explain.
4. If certified cost or pricing data were submitted, the extent to which reliance was not placed on said data is adequately set forth.
☐ N/A ☐ Yes ☐ No, explain.
5. The memorandum of negotiation adequately sets forth the action taken by the prime contractor and the subcontractor if it was recognized in the negotiation that any cost or pricing data submitted was not accurate, complete, or current.
☐ N/A ☐ Yes ☐ No, explain.
6. Where the total price/cost negotiated differs significantly from the contractor's total price/cost objective, the difference is adequately explained.
☐ N/A ☐ Yes ☐ No, explain.
7. The contractor has complied with cost accounting standards requirements for awarding subcontracts.
☐ N/A ☐ Yes ☐ No, explain.

Recommendation of Contracting Officer

- ☐ The subcontract consent package submitted is adequate and Contracting Officer consent to the propose subcontract is recommended:
- ☐ without conditions or comments.
 - ☐ with conditions.
 - ☐ with comments.
- ☐ The subcontract consent package is not adequate and sending a letter of non-concurrence is recommended.

Contracting Officer

Date

Sample Contracting Officer Consent Letter

Contractor Address

(EMCBC Letter Number)

Dear _____:

CONTRACTING OFFICER'S CONSENT TO SUBCONTRACT TO (insert Contractor name)
UNDER CONTRACT (or Task Order) NO. (insert Contract or Task Order number)

REFERENCE: (List reference from contractor requesting consent.)

I have reviewed the referenced Request for Consent to subcontract. Consent is hereby given for the placement of the subject proposed subcontract in the amount of \$_____.

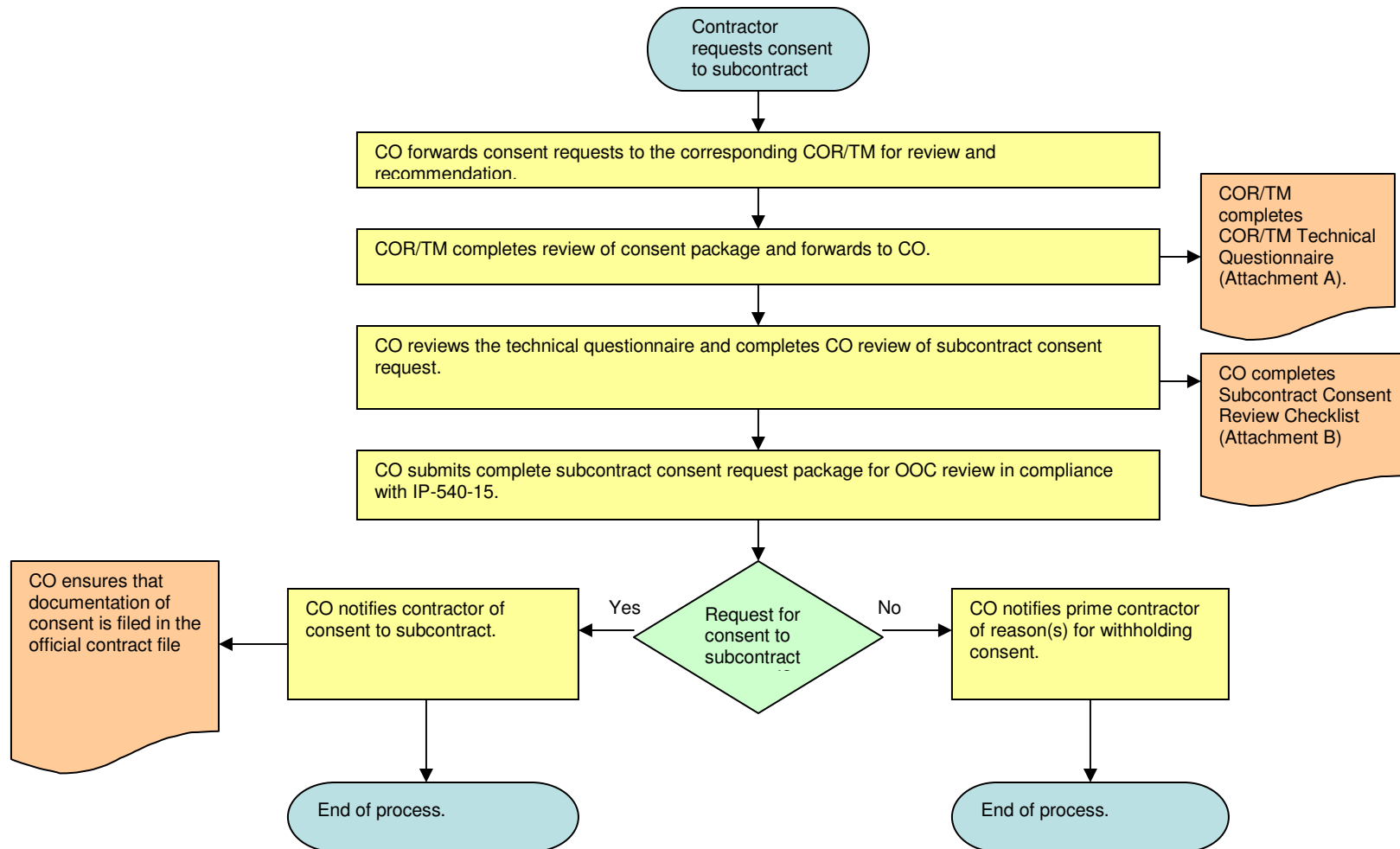
This consent shall in no way relieve the prime contractor of any obligations or responsibilities it may otherwise have under the contract or under law, shall neither create any obligation of the Government to, nor privity of contract with, the subcontractor or vendors, and shall be without prejudice to any right or claim of the Government under the prime contract. This consent does not constitute a determination as to the acceptability of the subcontract or the allowability of costs.

Please address any questions or comments to the undersigned at (XXX) XXX-XXXX.

Sincerely,

(Contracting Officer's Name)
Contracting Officer

SUBCONTRACT CONSENT REVIEWS PROCESS FLOW DIAGRAM



EMCBC RECORD OF REVISION**DOCUMENT**

If there are changes to the controlled document, the revision number increases by one. Indicate changes by one of the following:

- I Placing a vertical black line in the margin adjacent to sentence or paragraph that was revised.
- I Placing the words GENERAL REVISION at the beginning of the text.

Rev. No.	Description of Changes	Revision on Pages	Date
1	Original Issue	All	8/21/08